

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2058 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KAILASH RAMCHADNRA BANSARI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. D.P. Joshi A.P.P. for Respondent Nos.1, 2 and 3.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. D.R. Kachhavah for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondent nos.1, 2 and 3.

The detention order dated 7-1-1999 passed by the respondent no.1-District Magistrate, Panchmahals, Godhra against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities

Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that three criminal cases vide CR no.I 218/98 dt.10-6-1998 at Godhra Town Police Station, CR no.II 193/98 dt.11-9-98 at Godhra Town Police Station and CR no.II 2/99 dt.2-1-199 at Godhra Taluka Police Station were registered against the petitioner for the offences made punishable under the Indian Penal Code Chapter XVI. Furthermore, it also indicates that four witnesses on assurance of their anonymity have supplied information about the antisocial activity of the petitioner.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the privilege claimed by the detaining authority in respect to anonymous witnesses under Section 9(2) of "PASA" is not genuine. That the detaining authority himself has not verified the statements nor has he ascertained the apprehension shown by the witnesses about their safety and security. The detaining authority having relied upon such unverified statements while passing the impugned order, the subjective satisfaction reached by the detaining authority being vitiated, the impugned order is invalid.

5.. That in the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. DISTRICT MAGISTRATE, MEHSANA AND ORS. 1996(1) G.L.H. 300, this Court has expressed the view that statements of anonymous witnesses are required to be personally verified by the detaining authority for arriving at the subjective satisfaction in order to claim privilege under Section 9(2) of "PASA". That mechanical consideration of such statement without verification would vitiate the subjective satisfaction rendering the detention order invalid.

6. In the instant case, on scrutiny of compilation produced by the petitioner it appears that the grounds of detention is devoid of any information regarding any

incident alleged to have been stated by anonymous witnesses to the detaining authority. Not only that, despite service of rule, none of the respondents has filed any affidavit-in-reply. The compilation shown to me suggests that statements recorded of anonymous witnesses have been verified by the Divisional Supdt. of Police, but the same has not been verified by the District Magistrate, Panchmahals, Godhra who has acted as a detaining authority. Thus, it is clear that the detaining authority has failed to ascertain the genuineness of the fact alleged to have been stated by anonymous witnesses against the petitioner and has acted upon the said statement without verification while passing the impugned order which has vitiated the subjective satisfaction rendering the impugned order invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-1-1999 passed by the respondent no.1-District Magistrate, Panchmahals, Godhra against the petitioner is hereby quashed and set aside. The petitioner-detenu-Kailash Ramchandra Bansari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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